

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

MASSACHUSETTS DEVELOPMENT )  
FINANCE AGENCY )  
Plaintiff, )

v. )

C.A. No. 04 CV 10203 PBS

ADP MARSHALL, INC., a FLUOR )  
DANIEL COMPANY, and FIREMAN'S )  
FUND INSURANCE COMPANY )  
Defendants. )

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ADP MARSHALL, INC. )  
Plaintiff-in-Counterclaim, )

v. )

MASSACHUSETTS DEVELOPMENT )  
FINANCE AGENCY )  
Defendant-in-Counterclaim. )

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ADP MARSHALL, INC. )  
Third Party Plaintiff, )

v. )

ALLIED CONSULTING ENGINEERING )  
SERVICES, INC., ANDOVER CONTROLS )  
CORPORATION, R&R WINDOW )  
CONTRACTORS, INC., DELTA )  
KEYSPAN, INC. n/k/a DELTA )  
KEYSPAN, LLC, MADDISON )  
ASSOCIATES, INC., UNITED STATES )  
FIDELITY AND GUARANTY )  
COMPANY, FIDELITY AND DEPOSIT )  
COMPANY OF MARYLAND, )  
NATIONAL GRANGE MUTUAL, )  
INSURANCE COMPANY, TRAVELERS )  
CASUALTY AND SURETY COMPANY )  
OF AMERICA, AMERICAN HOME )

MASSACHUSETTS DISTRICT COURT  
SEP 10 2004  
CLERK OF COURT  
JAMES J. CONNOLLY  
CLERK

ASSURANCE COMPANY, )  
HARTFORD ROOFING COMPANY, INC. )  
and SPAGNOLO/GISNESS & )  
ASSOCIATES, INC. )  
Third Party Defendants. )  
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**MOTION TO CONTINUE COURT ORDERED MEDIATION**

Now comes ADP Marshall, Inc. (“ADPM”), Allied Consulting Engineering Services, Inc. (“Allied”), Andover Controls Corporation (“Andover”), Delta Keyspan, LLC (“Delta”), St. Paul Travelers Company, and R&R Window Contractors, Inc. (R&R) and moves this Honorable Court for a continuance of the date by which mediation was ordered to occur from September 30, 2004 to October 31, 2004. The mediation was ordered to occur by September 30, 2004 pursuant to this Court’s Scheduling Order dated March 10, 2004. In support of this motion, the parties hereto state as follows:

1. This Court granted ADPM’s amendment of its third party complaint on April 27, 2004 which added eight third party defendants. Service upon those third party defendants was accomplished over the following months.
2. The involvement of the third party defendants in the court ordered mediation is critical given that the allegations of the plaintiff relate to work performed by those third party defendants.
3. Third party defendants R&R and Maddison Associates, Inc. have performed substantial work at the plaintiff’s request and direction in an effort to resolve the water leak concerns asserted in plaintiff’s complaint. Hartford Roofing Company’s surety has evaluated the roofing concerns of the MHFA and we are hopeful that over the next few weeks a

reasonable proposal will be submitted by Hartford Roofing Company to the MHFA. If accepted, upon completion of any agreed work, the water leak concerns will be resolved.

4. With respect to the HVAC concerns raised by the MHFA, progress has been slower, nonetheless there has been progress. Allied, the HVAC design consultant, is evaluating the MHFA's concerns and believes a response for purposes of discussion can be provided in the near future. Since many of the concerns expressed by the MHFA relate to the design of the HVAC system, the mediation would be most productive after Allied has completed a review of the MHFA's concerns and responded in writing, or at a minimum, is prepared to respond orally.
5. Given the large number of third party defendants, the complexity of the design and construction issues, and the involvement of many necessary parties after the scheduling of the mediation, we ask that the date by which mediation must occur be continued to October 31, 2004 and that this Court's status conference occur thereafter. We are hopeful that additional progress will be made on all fronts, and at a minimum, there should be resolution of the water leak issues which should result in the dismissal of up to six parties from this lawsuit.
6. I, Andrew J. Tine, certify that I conferred with Plaintiff's counsel via email in an attempt to agree to a mutually agreeable mediation date and continuance of same.

WHEREFORE, the parties hereto request that the date by which court ordered mediation must occur be extended until October 31, 2004.

Respectfully submitted,  
Andover Controls Corporation  
By its attorneys,

/s/Eric Howard

John McNamara (BBO#557882)  
Eric Howard (BBO#637514)  
Domestico, Lane & McNamanara  
161 Worcester Road  
Framingham, MA 01701

Respectfully submitted,  
St. Paul Travelers Company  
By its attorneys,

/s/William E. O'Gara

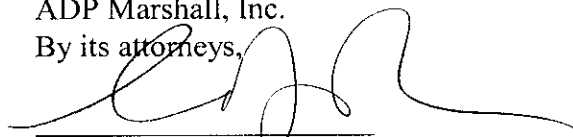
William E. O'Gara (BBO#555256)  
Holland & Knight, LLP  
One Financial Plaza, Suite 1800  
Providence, RI 02903  
(401) 751-8500

Respectfully submitted,  
Allied Consulting Engineering Services, Inc.  
By its attorneys,

/s/Jay Gregory

Warren Hutchison (BBO#246150)  
Jay Gregory (BBO#546708)  
Donovan Hatem, LLP  
Two Seaport Lane  
Boston, MA 02210

Respectfully submitted,  
ADP Marshall, Inc.  
By its attorneys,



Andrew J. Tine (BBO#633639)  
Haese, LLC  
70 Franklin Street, 9<sup>th</sup> Floor  
Boston, MA 02110  
(617) 428-0266

Respectfully submitted,  
Delta Keyspan, LLC  
By its attorneys,

/s/Alan Whitestone

Alan Whitestone (BBO#526200)  
Black, Cetkovic & Whitestone  
200 Berkeley Street  
Boston, MA 02116  
(617) 236-1900

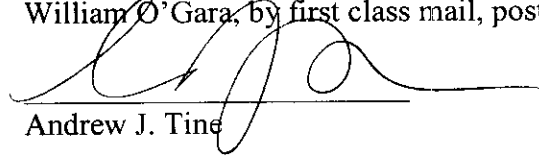
Respectfully submitted,  
R&R Window Contractors  
By its attorneys,

/s/John Bruno

John H. Bruno (BBO#542098)  
Masi & Bruno  
124 Long Pond Road  
Plymouth, MA 02360  
(508) 747-5277

**CERTIFICATION OF SERVICE**

I, Andrew J. Tine, hereby certify that I served a true and correct copy of the foregoing Motion to Continue Mediation upon Edward Vena, Esq., John McNamara, Esq., Warren Hutchison, Esq., Eric Loeffler, Esq., John Bruno, Esq., Allen Whitestone, Esq., Anthony Cipriani, Esq. and William O'Gara, by first class mail, postage pre-paid, this 8<sup>th</sup> day of September, 2004.

  
Andrew J. Tine